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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

VINCE FLAHERTY,

Plaintiff and Appellant,

v.

JPMORGAN CHASE BANK,
N.A.,

Defendant and
Respondent.

B282415

(Los Angeles County
Super. Ct. No. SC118787)

APPEAL from a judgment of the Superior Court of Los Angeles County, Lisa Hart Cole, Judge. Affirmed.

Vince Flaherty, in pro. per., for Plaintiff and Appellant.

Parker Ibrahim & Berg, Bryan Delgadillo, Mariel A.

Gerlt-Ferraro, Jenny L. Merris, for Defendant and
Respondent.

Plaintiff and appellant Vince Flaherty appeals from a judgment of dismissal following an order sustaining a demurrer in favor of JPMorgan Chase Bank, N.A. (JPMC), in this action arising out of foreclosure proceedings. On appeal, Flaherty contends: (1) the complaint states a cause of action for rescission against JPMC based on a notice of rescission that Flaherty sent to other parties under the Truth in Lending Act (TILA) (15 U.S.C. § 1601 et seq.) prior to filing for bankruptcy; (2) he has standing to assert claims that accrued after his bankruptcy discharge, and can amend the complaint to allege a claim for wrongful foreclosure against JPMC based on deficiencies in the assignment of his note and deed of trust; and (3) the trial court abused its discretion by limiting the length of Flaherty's third amended complaint, which prevented him from alleging a claim for fraud against JPMC with particularity, and by denying Flaherty leave to amend.

We conclude that the complaint does not allege a cause of action for rescission as to JPMC based on the TILA rescission notice, because JPMC was not a party to the loan transaction or an assignee. In addition, no abuse of discretion has been shown, because Flaherty has not demonstrated on appeal that the complaint can be amended to state a cause of action against JPMC. JPMC did not make any representations to Flaherty, was not an assignee of the note and deed of trust, and did not take any action to foreclose on the deed of trust. Therefore, we affirm.

FACTS AND PROCEDURAL BACKGROUND

Allegations of the Complaints

Flaherty filed his initial complaint in this case on October 19, 2012. The trial court imposed a limit on Flaherty's third amended complaint of 60 pages, including exhibits. On April 3, 2015, Flaherty filed his operative third amended complaint against numerous individuals and companies, including: Countrywide Home Loans, Inc. (Countrywide); Bank of America, N.A. (Bank of America); Wells Fargo Bank, N.A. (Wells Fargo); ReconTrust, N.A.; the Zuni Mortgage Loan Trust 2006-0A1 (the Zuni Trust); the Zuni Investors, LLC; RBS Acceptance, Inc., and the Royal Bank of Scotland Group (collectively RBS); Credit Suisse AG (Credit Suisse); and "JPMorgan Chase & Co., N.A." (the named defendant and the respondent on appeal referred to collectively as JPMC). The two claims alleged against JPMC were for rescission and fraud. The general allegations of the complaint were as follows.

Greenwich Capital Markets, owned by RBS, set up the Zuni Trust as a special purpose entity to hold high yield mortgage obligations. LaSalle Bank was named as the trustee, Wells Fargo was named as the master servicer and securities administrator, and Bear Stearns Companies, Inc. (Bear Stearns) was the underwriter for the Zuni Trust's offering of mortgage backed securities. Zuni Investors, LLC, gave money to underwriter Bear Stearns. Wells Fargo and

RBS purchased derivative insurance through Credit Suisse, Bear Stearns, and Lehman Brothers Inc. that was far in excess of the face value of the mortgages that the insurance would insure. LaSalle Bank placed securitization certificates for sale on the secondary market.

The sponsor and seller of the mortgages, Thornburg Mortgage, provided loan quotas and specified loan terms to the mortgage originator Countrywide. On behalf of the Zuni Trust, Wells Fargo sent \$8 million in upfront fees to the securitization department of Countrywide for a collection of negative amortizing mortgages, before the borrowers even saw their loan documents. The payment to Countrywide aided and abetted the subprime loan origination and securitization scam. When Countrywide and Thornburg pooled and assigned the mortgages for the Zuni Trust, Countrywide credited \$3 million of the upfront fees to RBS, Wells Fargo, Credit Suisse, Lehman, and Bear Stearns.

Flaherty had acquired two properties in Pacific Palisades in 1994. By September 2005, he obtained an occupancy certificate and applied for a mortgage with Countrywide. In January 2006, Countrywide represented that the best loan terms that Flaherty could obtain were for a negative amortization mortgage. A negative amortization mortgage is difficult to refinance, especially if the loan is sold or securitized. Flaherty declined the loan because it was too great a risk. A Countrywide executive contacted him and represented that if Flaherty accepted the loan, Countrywide would not securitize or sell it on the secondary

market. Countrywide promised to hold the loan and refinance it in six months with a jumbo conventional loan. Countrywide executives knew, however, that they would not be able to refinance the loan because of the company's deteriorating financial condition.

Based on Countrywide's representations, Flaherty executed documents on March 9, 2006, for a negatively amortizing loan. Without Flaherty's knowledge, Countrywide employees had converted his full documentation prime loan application package to a no documentation, stated income, low credit score subprime application, which met the subprime terms specified by loan purchasers. After closing, Countrywide employees substituted a subprime note with a higher interest rate and a different disclosure statement, which they believed Flaherty would never see, in order to earn Countrywide's highest commissions. The note and deed of trust named Countrywide as payee and beneficiary.

The Zuni Trust was formed under the laws of the state of Delaware pursuant to a trust agreement dated June 26, 2006, among the depositor, the trustee and the Delaware trustee, and a certificate of trust filed with the Secretary of State of the state of Delaware on June 26, 2006. LaSalle Bank was appointed the trustee of the Zuni Trust. In September 2006, Flaherty applied for the favorable conventional loan that Countrywide promised to him. Countrywide required Flaherty have \$1 million on deposit. He obtained a \$1 million line of credit from Wells Fargo. In

2007, Countrywide employees told Flaherty that his loan had been approved and refinancing was being completed. They represented that Countrywide still owned the loan, but the signatures of the board of directors were simply delayed. The negative amortization on the note increased by \$320,000 during the delay.

An intermediary, acting on Flaherty's behalf, contacted Wells Fargo to obtain new financing to pay off the negatively amortizing loan. Wells Fargo approved Flaherty for a new loan, but purchased the note and deed of trust from Countrywide in August 2007. A Wells Fargo employee represented that the company purchased the note in order to offer Flaherty better financing terms. A Countrywide employee confirmed that Wells Fargo was listed as the new beneficiary of Flaherty's note. LaSalle Bank was acquired by Bank of America in October 2007.

In January 2008, Bank of America Corporation announced its acquisition of Countrywide, which was eventually renamed BAC Home Loans Servicing, LP. Preparing for the collapse of the origination and securitization scheme, servicers had financial incentives to make more money from foreclosures. That month, Countrywide began debiting mortgage payments of \$26,932 from Flaherty's checking account at Wells Fargo, which were far higher amounts than were authorized by the loan documents. The unauthorized debits caused eleven checks to bounce.

Wells Fargo abruptly cancelled and demanded repayment of Flaherty's line of credit, froze one of his checking accounts, and returned a check that he had written for the Countrywide mortgage. Countrywide asserted that Flaherty was in default and reported the default to the credit bureaus, ruining his credit score. Wells Fargo demanded Countrywide take back the note and deed of trust for Flaherty's properties, which it did. Wells Fargo obtained a default judgment without proper service of process, writs of execution, seized Flaherty's bank accounts, and garnished his wages.

JPMC purchased Bear Stearns in 2008. LaSalle Bank adopted the Bank of America name and became defunct. Flaherty obtained a loan modification from Bank of America in exchange for refraining from litigation. A Bank of America employee represented that if he made payments on the trial modifications, he would receive permanent modifications, but Bank of America did not intend to perform. Flaherty made timely payments on a reduced interest rate loan modification for eight months.

In October 2008, Flaherty sent a notice of rescission of the Countrywide loan under the TILA to Countrywide, Bank of America and Wells Fargo.

In September 2009, a notice of default and election to sell under the deed of trust was filed as to one of Flaherty's two properties. Flaherty did not learn material facts about his Countrywide loan until he received his loan file in August 2010. He found changes to his application, forged

documents, and false information, which had prevented Flaherty from qualifying for anything other than a subprime loan and generated the highest fees and commissions for Countrywide.

In 2011, Bank of America claimed that Countrywide had sold Flaherty's note to Thornburg Mortgage. ReconTrust is an alter ego of Bank of America. On March 30 or April 8, 2011, ReconTrust recorded an assignment transferring the note and deed of trust on the second property from MERS to LaSalle, as trustee of the Zuni Trust. LaSalle was defunct, mortgages could not be transferred to the Zuni Trust more than 90 days after the creation of the trust, and the terms of the trust prevented transferring a mortgage in default to the trust. On March 31, 2011, ReconTrust recorded a notice of default on the second property on behalf of the beneficiary LaSalle, as trustee of the Zuni Trust.

On June 15, 2012, ReconTrust recorded a notice of trustee's sale of the second property which named the defunct LaSalle Bank as the beneficiary. At the same time, Flaherty was notified that he had been approved for a new loan modification.

On July 30, 2012, ReconTrust issued a trustee's deed upon sale conveying title to the foreclosing beneficiary U.S. Bank, N.A., as successor trustee by merger to LaSalle, as trustee to the holders of the Zuni Trust, who purchased the rights to the note and deed of trust through a credit bid.

On August 1, 2012, ReconTrust executed an assignment of the beneficial interest in the deed of trust from Bank of America to U.S. Bank, as successor trustee to Bank of America, successor trustee by merger to LaSalle, as trustee to the holders of the Zuni Trust.

The financial trading defendants Lehman; Bear Stearns; JPMC as successor in liability to Bear Stearns; Credit Suisse; Wells Fargo; Countrywide; and RBS acted together wrongfully in the creation and operation of the Zuni Trust for predatory subprime mortgages. The loan terms ensured the mortgagors would not be able to refinance and the purpose of the Zuni Trust was to foreclose on collateral. The corporations were alter egos of each other and wrongfully acted as a RICO enterprise with respect to the Zuni Trust, resulting in the subprime loan origination and securitization scam affecting Flaherty's property. The financial trading defendants engaged in a common enterprise with the purpose to sell toxic loans to unwitting secondary market investors by fraudulently deceiving borrowers to enter negative amortization pay option loans with temporary, preliminary rates, misrepresentations and non-disclosure of material terms, knowing borrowers would default when the interest rates increased. They aided and abetted Countrywide employees through substantial fees. Flaherty has standing as a borrower under the plan. None of the individual defendants were alleged to have an association with Bear Stearns or JPMC.

In the claim for rescission, Flaherty alleged that his consent was induced by mistake and misrepresentation of material facts by Countrywide employees and a failure of consideration. He has incurred expenses as a result of the defendants' refusal to acknowledge his notice of rescission under the TILA and will suffer substantial additional harm if his notice of rescission is not honored. He offered to restore any net consideration to which the defendants were entitled by law.

The claim for fraud was based on representations made at the time that Flaherty executed the note and deed of trust. None of the allegations related to rescission or fraud mentioned Bear Stearns or JPMC.

Demurrer Proceedings by Other Defendants

On May 8, 2015, Credit Suisse filed a demurrer on the grounds that the allegations of the complaint were rambling, ambiguous and unintelligible, failed to state a cause of action for rescission or fraud against Credit Suisse, and there were no facts alleging that Credit Suisse owned an interest in the property or was implicated in the causes of action against it.

RBS filed a demurrer on May 8, 2015, on similar grounds that the complaint was unintelligible, failed to allege the role of RBS in the wrongful conduct, was untimely, and failed to state causes of action for rescission or fraud against RBS.

On May 8, 2015, multiple defendants filed a demurrer, including U.S. Bank, Bank of America, Countrywide, ReconTrust, and the Zuni Trust, to each of the causes of action alleged in the third amended complaint. One of the grounds stated was judicial estoppel. Flaherty had filed for bankruptcy on September 12, 2011, and listed an action arising from foreclosure proceedings on the first property, but he had stated the value of the lawsuit was zero. The claims alleged in the present action arose prior to the bankruptcy filing. Flaherty had knowledge of them. He was estopped from taking a different position in the present lawsuit. Even if he were not estopped, the causes of action became property of the bankruptcy estate and there was no evidence that the bankruptcy trustee had abandoned the claims. Any claims that Flaherty failed to list on the bankruptcy schedule could not have been abandoned by the bankruptcy trustee.

The U.S. Bank demurrer also argued that the Zuni Trust was not a proper defendant. The trustee of a trust, not the trust itself, owns legal title to trust property. In addition, Flaherty had named U.S. Bank in its corporate capacity, but not its capacity as trustee for the Zuni Trust. The demurrer should additionally be sustained as to claims brought against the Zuni Trust or U.S. Bank in its corporate capacity for this reason.

The U.S. Bank demurrer noted that the claims for fraud and promissory estoppel were not alleged with the requisite specificity. Flaherty also failed to allege that he

had tendered his outstanding indebtedness, and there was no viable theory alleged that the sale of the property was wrongful. The relevant statutes of limitations had run as well.

After a hearing on December 8, 2015, the trial court sustained the demurrers brought by Credit Suisse, RBS, U.S. Bank and others, without leave to amend. On January 26, 2016, the trial court entered a written order sustaining the demurrers. The court noted that Flaherty's first amended complaint was so voluminous at 279 pages that it was incomprehensible, contained facts that were irrelevant to any possible claim, and asserted 26 causes of action. Flaherty had admitted that the first amended complaint was defective and requested leave to file a second amended complaint. The second amended complaint was also so lengthy that it was incomprehensible, filed without leave of court, and ultimately stricken. After the court permitted Flaherty to file a third amended complaint with a 60-page limit, the caption and table of contents referred to 33 causes of action, but only seven causes of action were captioned and pled within the body of the complaint.

The court took judicial notice of Flaherty's bankruptcy petition under Chapter 7, which was filed on September 12, 2011, after Flaherty's discovery of the alleged fraud in connection with the subprime note. As to all the demurring defendants, the court found Flaherty lacked standing to bring the claims alleged in the third amended complaint. According to the allegations of the complaint, Flaherty's

claims accrued in October 2008 and August 2010. He was therefore required to include his claims in his September 12, 2011 bankruptcy schedule of assets. His schedule of assets included “Flaherty v. Bank of America, et al. SC108012,” which he listed as having a value of zero. The action listed on the schedule was ultimately dismissed on the ground that Flaherty was judicially estopped from claiming damages after appraising the value of the action as zero. Because he failed to list the claims alleged in the present complaint on his bankruptcy schedule, they did not revert to him when his petition was discharged, and the claims remained the property of the bankruptcy estate. The real-party-in-interest was the bankruptcy trustee. Flaherty had not obtained an order indicating that the trustee is abandoning the claim or Flaherty may proceed on the claims.

The trial court relied on *Jenkins v. JPMorgan Chase Bank, N.A.* (2013) 216 Cal.App.4th 497 (*Jenkins*), to find that Flaherty lacked standing to pursue a claim for failure to disclose the securitization of his loan or any claim based on the transfer of his loan from the lender to subsequent purchasers of the note and deed of trust.

In addition, with respect to the demurrers of certain defendants who were not parties to the loan transaction, including RBS and Credit Suisse, the trial court found there were no allegations sufficient to state claims for rescission or fraud against them. The court found that the non-lender defendants were, at most, participants in the securitization

of the loans and Flaherty could not challenge the validity of those transactions.

On August 2, 2016, Zuni Investors filed a demurrer to the third amended complaint on the grounds that Flaherty lacked standing after having listed his claims against various defendants in his amended bankruptcy schedules as having zero value. The claims for fraud and for rescission based on fraud in the inducement lacked the requisite specificity and contained no allegations of wrongdoing by Zuni Investors. The claims were barred by the statute of limitations as well. With respect to the cause of action for quiet title, Flaherty had failed to identify the legal description of the property or tender the indebtedness on the property. In addition, the property had been sold at a trustee's sale, so Flaherty's claim to title had been extinguished and quiet title was no longer an appropriate remedy for foreclosure. No cause of action for wrongful foreclosure had been alleged against Zuni Investors.

In opposition, Flaherty argued that *Jenkins, supra*, 216 Cal.App.4th 497, which the trial court had relied upon in sustaining other demurrers, had been overruled by the California Supreme Court in *Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919 (*Yvanova*). Zuni Investors, as the sole holder of the trust certificates in the Zuni Trust, was the owner and sole beneficiary of the Zuni Trust. Zuni Investors caused a notice of trustee sale to be recorded on June 15, 2012, based on the note and deed of trust that Flaherty rescinded in 2008, even after admitting

they never received the note from Countrywide, and were aware that Flaherty's loan modification had been approved. On July 30, 2012, a trustee's deed upon sale purported to convey title to the foreclosing beneficiary U.S. Bank, as trustee for Zuni Investors, by virtue of a credit bid from U.S. Bank. On August 1, 2012, an assignment purported to transfer the note and deed of trust to U.S. Bank as trustee of the Zuni Trust for Zuni Investors. On November 9, 2012, U.S. Bank filed an unlawful detainer action. Recently discovered evidence would show that on February 26, 2013, Countrywide paid \$6,021,775.03 to Zuni Investors, which was the amount of the mortgage balance plus interest, because Countrywide never conveyed the note, deed of trust or loan file to Zuni Investors. On April 3, 2013, U.S. Bank had dismissed its unlawful detainer action without prejudice. Flaherty did not know, and could not have known, of the existence of Zuni Investors before his discharge from bankruptcy.

Flaherty also argued that the claims in the present action arose from a different property than the lawsuit listed in his bankruptcy schedule and did not accrue until after the bankruptcy discharge on March 27, 2012. Zuni Investors was liable for wrongful foreclosure in violation of court orders after the bankruptcy discharge. In addition, Flaherty had been promised that his loan would be held by Countrywide and not securitized. Among other arguments, Flaherty requested leave to amend to allege wrongful

foreclosure against Zuni Investors, as well as fraud and other theories.

After a hearing on August 26, 2016, the trial court sustained the demurrer of Zuni Investors without leave to amend. The court determined that, consistent with the prior demurrers, all rescission claims accrued in 2008, when Flaherty's notice of rescission was disregarded, and all fraud claims related to the origination of the subprime note accrued in August 2010. Flaherty was required to list the claims in his bankruptcy schedule, and the unscheduled claims did not revert to him. Flaherty also failed to allege any specific allegations against Zuni Investors. The claims are based on the original loans and the 2008 notice of rescission, not events that occurred in 2012. In addition, the causes of action alleged against Zuni Investors challenge the mortgage, but not the assignment of the mortgage. The cause of action for quiet title failed to allege any claim to title to the property against Zuni Investors.

Flaherty also failed to allege any relationship between Zuni Investors and the Zuni Trust that would give Zuni Investors any rights or obligations under the deed of trust at issue. None of the evidence submitted by Flaherty in support of his request for leave to amend showed the Zuni Investors was a beneficiary of the foreclosed deed of trust. The fact that Zuni Investors may be the sole beneficiary of the Zuni Trust was not sufficient to plead that Zuni Investors had asserted any adverse claim to title, rather than U.S. Bank as trustee of the Zuni Trust.

JPMC's Demurrer

On October 21, 2018, JPMC filed a demurrer to the third amended complaint on behalf of “JPMorgan Chase Bank, N.A., . . . erroneously sued as JPMorgan Chase & Co, N.A.” JPMC argued that claims for rescission and fraud alleged against JPMC in the complaint were precluded by prior rulings sustaining demurrers of other defendants without leave to amend. Specifically, the claims against the non-lender defendants had accrued before Flaherty filed for bankruptcy on September 12, 2011, and therefore, his claims against non-lender defendants belonged to the bankruptcy estate. In addition, the complaint failed to state sufficient facts to constitute a cause of action for rescission or fraud against JPMC. Vague allegations of liability against multiple defendants responsible for creating the Zuni Trust were insufficient to support claims for rescission or fraud with respect to loans that JPMC did not participate in making. The complaint simply alleged that JPMC, as successor in interest to Bear Stearns, was involved in the securitization of subprime loans. There are no allegations against JPMC relative to the loans or the property at issue in the lawsuit. Both claims were barred by the applicable statutes of limitations as well.

Opposition to Demurrer

Flaherty filed an opposition. He asserted that the demurring entity was a subsidiary of the named defendant. The named defendant was the successor to Bear Stearns, and had not been erroneously sued.

Flaherty argued that the complaint stated a cause of action because it alleged Bear Stearns and its successor in liability was the true lender of his debt. Bear Stearns and its successor operated the Zuni Trust through the Zuni Investors, LLC, to fraudulently foreclose on his property.

Flaherty stated that he could amend the complaint to allege the named defendant falsely claimed to be the true beneficiary when it ordered the trustee's sale. In 2006, Bear Stearns and its successor used an inherently fraudulent version of the bank partnership model to create Zuni Investors and the Zuni Trust to hold subprime mortgages that would have to be refinanced or foreclosed. JPMC extended credit to Bear Stearns to fund Greenwich as the depositor of the Zuni Trust in order to purchase Flaherty's mortgage, which Countrywide had not yet approved. Zuni Trust certificates were delivered to Bear Stearns, not passive secondary market investors. Prior to Bear Stearns acquiring all the certificates of the trust, JPMC took derivatives positions to ensure a return of 600 percent if the mortgages that were pooled for the trust defaulted, which JPMC knew would occur if the mortgages were not refinanced. These events took place before Flaherty signed the loan documents

for the subprime mortgage. Bear Stearns placed the Zuni Trust certificates into a hedge fund in 2007. In late May 2007, Bear Stearns closed the hedge fund. Countrywide never conveyed the promissory note to anyone until Countrywide sold the note to Wells Fargo in 2007. In 2008, Wells Fargo, Countrywide and Bank of America, acting as servicers for the Zuni Trust owned by JPMC began debiting unauthorized amounts from Flaherty's Wells Fargo accounts, refusing the honor overdraft protection, dishonoring checks, and freezing accounts. Flaherty tendered payments and never defaulted. When JPMC acquired Bear Stearns on March 16, 2008, JPMC became the full owner of Zuni Investors and the Zuni Trust. It became the sole owner of all certificates of the Zuni Trust. At the time of the violations alleged, the successor was "acting as the predominant economic interest of Zuni Investors, LLC and its trustee U.S. Bank, and, falsely claiming to be the sole beneficiary" of Flaherty's mortgage. On March 31, 2013, Countrywide paid the Zuni Trust in full for the balance due on the principal of Flaherty's subprime mortgage, plus interest. Zuni Investors received a double recovery exceeding the balance on the subprime mortgage because they were paid and clouded title to his property.

Flaherty argued that his claims for rescission and fraud were brought against all defendants, including JPMC, but his claims for wrongful foreclosure and promissory estoppel were also brought against JPMC as a Doe defendant. In addition, claims that he could not allege

against JPMC due to the page limitation were aiding and abetting, breach of contractual relations, breach of contract, violation of the RICO act (18 U.S.C. § 1964(c)) and declaratory relief.

He also argued that the doctrines of claim and issue preclusion did not apply prior to final judgment. In addition, the bankruptcy trustee had abandoned the property to the debtor. Flaherty argued that the claims were made within the applicable statutes of limitations.

Reply and Trial Court Ruling

In reply, JPMC argued that the trial court had already adjudicated the arguments raised in opposition to the demurrer, including the contention that the bankruptcy trustee abandoned the claims. Flaherty could not rescind the agreement with respect to a non-party to the agreement. The claim for fraud lacked specificity and was barred by the statute of limitations.

A hearing was held on JPMC's demurrer on January 20, 2017. The trial court sustained JPMC's demurrer without leave to amend. The court found that the rulings on prior demurrers applied equally to JPMC's demurrer. Flaherty lacked standing and was judicially estopped from asserting any claim that arose prior to December 20, 2011. Based on *Jenkins, supra*, 216 Cal.App.4th 497, Flaherty lacked standing to pursue any claim based on the transfer of his loans from the lender to subsequent purchasers of the

note and deed of trust. Flaherty's claims that foreclosure proceeded in violation of a temporary restraining order and a preliminary injunction issued in other cases should have been addressed in the respective cases, not through a separate action for wrongful foreclosure. Moreover, Flaherty failed to prevail in either case. There were no allegations sufficient to state claims for rescission or fraud against the non-lender defendants. The trial court denied Flaherty's request to file a fourth amended complaint. The trial court entered a judgment of dismissal as to JPMC on March 6, 2017. Flaherty filed a timely notice of appeal from the judgment.

DISCUSSION

Standard of Review

"We first review the complaint de novo to determine whether the complaint alleges facts sufficient to state a cause of action under any legal theory or to determine whether the trial court erroneously sustained the demurrer as a matter of law. [Citation.] Second, we determine whether the trial court abused its discretion by sustaining the demurrer without leave to amend. [Citation.] Under both standards, appellant has the burden of demonstrating that the trial court erred. [Citation.] An abuse of discretion is established when 'there is a reasonable possibility the plaintiff could cure the defect with an amendment.'

[Citation.]” (*Aguilera v. Heiman* (2009) 174 Cal.App.4th 590, 595.)

Rescission

Flaherty contends that the complaint states a cause of action for rescission based on the notice of his intent to rescind the loan transaction that he sent on October 26, 2008, to Countrywide, Wells Fargo, and Bank of America, which was within the three-year statute of limitations provided under the TILA in cases where proper disclosures are not made. We conclude that Flaherty has not stated a cause of action for rescission as against JPMC.

“TILA requires that specific disclosures be provided to borrowers of qualifying consumer credit transactions that are secured by the borrowers’ residence.” (*Pacific Shore Funding v. Lozo* (2006) 138 Cal.App.4th 1342, 1349.) “If any required disclosures are not given, the borrower’s right to rescind is extended from three days to *three years after the date of consummation of the transaction*. (15 U.S.C. § 1635(a) & (f); 12 C.F.R. § 226.23(a)(3) (2006).)” (*Id.* at p. 1350.) “Under TILA, rescission ‘does not mean an annulment that is definitively accomplished by unilateral pronouncement, but rather a remedy that restores the *status quo ante*. [Citation.]’ [Citation.] Once borrowers exercise their right to rescind under TILA, their liability for the loan ceases and any security interest given becomes void. (15 U.S.C. § 1635(b).) Procedurally, lenders must return to the

borrowers ‘any money or property given as earnest money, downpayment, or otherwise, and . . . terminat[e the] security interest,’ and borrowers must tender back to the lenders property, e.g., the loan proceeds, received from the lender. (15 U.S.C. § 1635(b); 12 C.F.R. § 226.23(d) (2006).) Stated otherwise, after rescission, borrowers are “not liable for any finance or other charge” such as interest, commissions, or extra payments in a TILA rescission. [Citations.]” (*Id.* at p. 1354, fns. omitted.)

Flaherty has not alleged, or shown that he can amend to allege, that JPMC has any interest in the note and deed of trust that would have been affected by Flaherty’s rescission of the loan agreement. JPMC was not a party to the original transaction or an assignee of the note and deed of trust. Flaherty has not shown that any cause of action for rescission based on the TILA can be alleged against JPMC.

Leave to Amend

On appeal, Flaherty concedes that the complaint does not state a cause of action for fraud against JPMC. Instead, he contends that the trial court abused its discretion by imposing a page limit which prevented him from alleging a cause of action for fraud against JPMC with particularity. Flaherty has not demonstrated any harm on appeal, however, because he has not shown that he could amend the complaint to allege a claim for fraud or any other cause of action against JPMC. He does not contend that Bear

Stearns or JPMC made any false representations to him, or that JPMC foreclosed on the deed of trust. The trial court did not abuse its discretion by denying leave to amend.

Flaherty contends that under *Yvanova, supra*, 62 Cal.4th 919, he has standing to pursue a claim for wrongful foreclosure on the ground that U.S. Bank, as an agent of JPMC, wrongfully purported to receive his loan, held no beneficial interest under the deed of trust, and lacked authority to initiate foreclosure. “[A]lleged irregularities in the securitization process are merely voidable at the securitized trust beneficiary’s behest[.]” (*Kalnoki v. First American Trustee Servicing Solutions, LLC* (2017) 8 Cal.App.5th 23, 43.) Since Flaherty was not a beneficiary of the Zuni Trust, he lacks standing to challenge an assignment based on an unauthorized act by the trustee. Moreover, U.S. Bank acted in its capacity as trustee of the Zuni Trust. There are no allegations that JPMC took any action.

Flaherty has not shown that he can amend the complaint to allege a cause of action for rescission, quiet title, wrongful foreclosure, aiding and abetting, or conspiracy as against JPMC. The complaint simply alleges that Bear Stearns participated in creating the Zuni Trust for ownership of subprime loans. Although Flaherty alleged that Countrywide entered into subprime loans on terms that satisfied the purchase requirements of various financial entities, the purchaser of Flaherty’s note and deed of trust did not become a party to the loan transaction, and there are

no allegations that JPMC took any wrongful action. Flaherty has not demonstrated on appeal that he could amend the complaint to allege any action taken by Bear Stearns or JPMC that would support liability for rescission, quiet title, wrongful foreclosure, aiding and abetting, or conspiracy in this case.

In addition, Flaherty also has not articulated any abuse of discretion in the trial court's denial of discovery as to JPMC. Flaherty's argument on appeal that the named defendant JPMorgan Chase & Co., N.A. is in default cannot be raised for the first time on appeal. Issues not raised until Flaherty's reply brief have been waived.

DISPOSITION

The judgment is affirmed. Respondent JPMorgan Chase Bank, N.A., is awarded its costs on appeal.

MOOR, J.

We concur:

RUBIN, P. J.

KIM, J.